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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/358,280	07/21/1999	STEVEN M. UTTER	MISTY-52064	1354

7590 01/09/2004

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EXAMINER

KIM, CHRISTOPHER S

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 01/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/358,280

Applicant(s)

UTTER, STEVEN M.

Examiner

Christopher S. Kim

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-10, 18-21 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-10, 18-21 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 19, 2003 has been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Priority

3. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 and/or 121 as follows:

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application); the disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

Claims 7, 9, 10, 18-21 and 23 have not been granted the benefit of the earlier filing date.

Drawings

4. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on October 23, 2000 and April 17, 2003 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

5. Claims 8 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 recites the limitation "said inlet" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 9, the recitation "type" renders the claim indefinite. The metes and bounds of the claim cannot be determined.

Claim Rejections - 35 USC § 102

6. Claims 5, 8, 9, 18, 19, 21 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Norman (842,689).

With respect to claims 5, 8, 9 and 23, Norman discloses an apparatus comprising: a pressurizable container 1; means 7, 11 for pressurizing the container; a water conduit 3, 4 (a first conduit 4; a second conduit 3); a spray nozzle 8; a restrictive valve (see figures and page 1, lines 80-92); a means for sealing 6, 8, 9.

With respect to claims 18, 19 and 21, Cushing discloses an apparatus comprising: a pressurizable container 1; a manual pump 7, 11; a means for delivering fluid (spray nozzle) 8; a means for controlling the emission of evaporative mist (valve) (see figures and page 1, lines 80-92); a first conduit 4; a second conduit 3; a means for hands-free directing (ability for hose 3 to hand and point the nozzle downward).

Intended use recitation such as "for cooling a local area in the vicinity of a person by evaporative cooling" does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations

Functional recitation such as "said spray nozzle delivering an evaporative cooling mist of water in the vicinity of a person" has not been given patentable weight because it is narrative in form.

7. Claims 5, 18, 19, 21 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Cushing (4,911,339).

With respect to claims 5 and 23, Cushing discloses an apparatus comprising: a pressurizable container 16; means 40 for pressurizing the container; a water conduit 18, 51, 72 (a first conduit 72; a second conduit 18, 51); a spray nozzle 20; a restrictive valve 46; a means for sealing 36,70.

With respect to claims 18, 19 and 21, Cushing discloses an apparatus comprising: a pressurizable container 16; a manual pump 40; a means for delivering fluid (spray nozzle) 20; a means for controlling the emission of evaporative mist (valve) 46; a first conduit 72; a second conduit 18, 51; a means for hands-free directing (clip) 24.

Claim Rejections - 35 USC § 103

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing (4,911,339).

Cushing in view of Rosenberg discloses the limitations of the claimed invention with the exception of ice. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have added ice to the container of Cushing to dispense ice water.

9. Claims 7 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing (4,911,339) in view of Shurnick et al. (4,852,781).

Cushing differs from what is claimed in the means secured to the misting apparatus for attaching the misting apparatus to a person's waist. Shurnick et al. discloses a means 27 for securing a bottle to a part of a person's body (waist shown in figure 1). It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced cage 30 of Cushing with the means 27 of Shurnick et al. to attach the device of Cushing to a runner.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing (4,911,339) in view of Norman (842,689).

Cushing discloses the limitations of the claimed invention with the exception of the manual piston type pump. Norman discloses a piston pump 7, 11, 12, 13, 17. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced the bellows pump of Cushing with the piston pump of Norman to provide faster compression.

Response to Arguments

11. Applicant's arguments filed December 19, 2003 have been fully considered but they are not persuasive.

In response to applicant's swearing behind Cushing, Claims 7, 9, 10, 18-21 and 23 have not been granted the benefit of applicant's earlier filing date because applications 07/927,231; 07/698,356; 07/376,380 do not sufficiently disclose the claimed invention to comply with the requirements of the first paragraph of 35 U.S.C. 112.

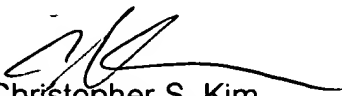
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (703) 308-8336. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.


Christopher S. Kim
Primary Examiner
Art Unit 3752

CK